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SUBJECT: PROPERTY RESTITUTION: SERBIAN GOVERNMENT DRAFT
PROTECTS ILL-GOTTEN GAINS, LIMITS ACTUAL RESTITUTION

SUMMARY

¶1. On May 10, the outgoing Serbian government approved a draft law that would restitute property seized by wartime Nazi occupation forces and Tito's subsequent communist regime. The law, if approved by the new government and adopted by the parliament, would establish a legal procedure for establishing claims to seized property. Regional commissions would then adjudicate all claims and award in-kind restitution where possible and compensation in the form of tradable bonds in all other instances. Despite the fact that claimants and their representatives have generally responded favorably to the draft, several of the law's provisions could be used to limit significantly the number of eligible claimants and protect those who acquired thousands of valuable properties - often illegally - during the Milosevic era. END SUMMARY.

A RATHER STRAIGHTFORWARD PROCEDURE

¶2. The draft "Law on Denationalization and Construction Sites" is based on the principle that property seized by the Nazis after April 6, 1941, or the Communists after January 1, 1945, "shall be restored to the former owner's possession and actual control (i.e., restitution in-kind), and should that be impossible in accordance with the present law, the former owner shall be entitled to an indemnity." In order to be eligible for restitution, the former owner or heirs must register a claim with one of four regional denationalization commissions before December 31, 2008. In order to be considered complete, all claims must include a description and approximate value of the property, a copy of the official act seizing the property, and legal grounds for making the claim. The law criminalizes any act that would prevent potential claimants from immediate access to legal and cadastral records for the purpose of making or supporting their claim.

¶3. Commissions will be chaired by active judges. The Ministries of Justice, Finance and Local Self-Government will nominate one member to each commission, which will also include an unspecified number of experts, such as government lawyers, members of the geodetic survey office, and civil engineers. The law stipulates that these commissions must adjudicate each claim within six months of receiving all necessary documentation from the claimant. In the event of "complex" claims, the commission may deliberate for up to one year.

RESTITUTION OR INDEMNITY: BURIED IN DETAILS

¶4. Restitution in-kind is to be immediate, although the law provides an opportunity for appeal of any decision to the state-level Restitution Authority (to be established by subsequent enabling legislation) within 15 days of the

commission's decisions. Appellate judgments, which must be delivered within 60 days, may be appealed to the Serbian Supreme Court. Compensation in bonds is reserved for claimants whose properties have been a) used for public works (roads, parks, schools, etc.), b) purchased in good faith by natural persons (such properties purchased by legal persons are eligible for in-kind restitution), or c) otherwise made ineligible for in-kind restitution (the current draft is not specific on reasons). Claimants whose properties cannot be restituted may request that the government hand over a similar property in its place; however, the law is not clear how this would be accomplished. Bond compensation is capped at EUR 1 million per claimant and EUR 1 million per property. The 20-year bonds will bear a 4.5 percent annual interest and mature in 2028. [NOTE: The government has already announced it is setting aside EUR 4 billion for such payments. End Note.]

¶5. With regard to improvements made to such properties since the time of seizure, such development will not be subject to restitution. [NOTE. This would appear to include, in addition to the many legitimate projects, all developments carried out by beneficiaries of Milosevic-era largesse. End Note.] In such cases, claimants may choose to buy out the current possessors, award a market-value percentage of the overall ownership stake to the current possessor commensurate with the value of the development, or negotiate another solution. Properties on which legal persons own residential buildings will be restituted in-kind; those on which legal persons hold usage rights will be converted into a one-year lease arrangements, during which the two parties should reach an agreement. [Note: We are concerned over the lack of a dispute resolution mechanism for those cases where a claimant cannot reach a deal with current possessors. End Note.] Commercial properties unencumbered by leases will be restituted in-

kind. Leased commercial properties will also be returned; however, the current lease will remain in effect for one year.

¶6. Although the law declares immediate, in-kind restitution as its guiding principle, the current draft falls short in several areas. A plain reading of the language defining eligible claimants would exclude thousands of people who received "apartment rights" during Communist times and, thus, have a basis to establish ownership rights to those apartments as they are denationalized, regardless of any discrepancy in value between their current and former properties.

¶7. In addition, the law explicitly legalizes all property transactions occurring before October 5, 2000, including the Milosevic-era distribution of assets to friends of the regime. In cases of mala fides transactions which preclude restitution in-kind, the law relieves the individual party to the transaction from any personal liability. It also exempts developers who have demolished claimed buildings subsequent to June 8, 2005 - the date on which the "Law on Declaring and Registering Seized Property" entered into force - from personal liability. The law transfers the cost of restitution in these cases from developers to the taxpayer via compensation in bonds.

¶8. The compensation provisions also present concerns. The current provisions would issue EUR 4 billion in securities, about 20 percent of GDP, thereby adding almost 50 percent to Serbia's debt load. In addition, our Treasury adviser is concerned that the bonds should be structured to mature only beginning in 2016, after the last frozen foreign currency bonds mature, to ease the burden on debt servicing. (However, the bonds should be completely tradable, permitting claimants to sell bonds immediately at whatever price the market sets.)

COMMENT

¶9. In its current form, the law would do the bare minimum

possible to satisfy US and EU concerns about restitution while preserving as fully as possible the real estate status quo. In effect, possessory interests acquired during the Milosevic period, legally or otherwise, will be converted into partial-to-complete ownership rights. It will be the Serbian taxpayer who bears the burden of substituting bond payments for restitution in many cases.
End Comment.

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